EXHIBIT 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MICROSOFT CORPORATION,	)	
	)	
Plaintiff,	)	CASE NO. C10-1823JLR
	)	
v.	)	SEATTLE, WASHINGTON
	)	July 30, 2013
MOTOROLA, INC., et al.,	)	
	)	*Daubert* hearing
Defendant.	)	
	)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: ARTHUR HARRIGAN
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DAVID PRITIKIN
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For the Defendant: KATHLEEN SULLIVAN
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easier than to try to formulate a way of implementing what the court wants to do once we understand, based upon the motion in limine, what the court thinks the jury should hear.

THE COURT: Well, I will get you that, but let me give you some preliminary thoughts.

This notion that what happened before didn't happen isn't going to fly. I've said that now twice, and I'll say it again, so let's listen this time.

We had a great deal of time and effort that went into a trial and the production of an order. This notion that we're going to start over again that I keep hearing about is not going to work. The jury is not going to have pretended to it that the court did not issue an order.

Now, the portions of it that come in and the form that it comes in, that's up for consideration. But I don't -- I have not read your motion, but, you know, this is the third time now that I've listened to Motorola announce, you know, whatever happened before didn't count and we get to start over again. And, frankly, reading some of the Holleman observations -- you know, for example, there are similarly no RAND provisions in SPO policies requiring that an opening offer be of a certain rate, or in relation to the final agreed-upon RAND license rates.

Yes, it does not say in my order in regards to SPO policies, but it says that as a matter of law, which your

counsel agreed to, there is a relation to the RAND rate.

So, you know, Mr. Price, I don't know where this is coming from, but you're not going to get there.

MR. PRICE: Let me respond very briefly to give you some assurance, and I'll respond to what's in Mr. Holleman's report. I can do it now or later.

With respect to the motion in limine, obviously, we take the position, which the court disagrees with, on pretending that the first part didn't happen. But -- but conceding that -- or not conceding that, but assuming that part of the orders will get to the jury -- and I've certainly heard the court time and again say the jury will be told what the court determined was the RAND range and RAND rate, and I've seen you in writing and I've heard you say that the jury is entitled to hear that in order to make a determination as to whether or not Motorola acted in good faith.

So even given that, then the question is, how much of this detail would go to the jury? That is, the court, in effect, did the hypothetical negotiation. Now, Motorola's position is -- the key question here is good faith. It's not -- you know, Motorola is not required to have that conversation in its head at the time of the opening offer. You know, the question is, was Motorola, in good faith, willing to negotiate for a FRAND rate? And if the parties disagreed, perhaps the court would have to determine what that FRAND

rate was.

So given that position, you know, the question is, you know, how much of the court's order -- or the court goes through this negotiation and comes up with a rate, does the jury have to hear, or even should they hear, because our, you know, our position is that -- that internal dialogue, which the parties would be having or would actually have in negotiation, is irrelevant to the question as to how Motorola acted when it made its offers.

The question at that time was whether Motorola acted in good faith, whether they were trying to impose a holdup, you know, whether or not they, in effect, had the intent not to grant, you know, a license under FRAND. And so I understand, you know, Your Honor wanting to tell the jury about, you know, what the FRAND rate was that was determined and the range that we, on the record, have a disagreement as to that. But if we get past that, the question is, what else of this 200-page order comes in?

THE COURT: I agree with you, sir, that there are large portions of it that the jury is not going to need to see, but, you know, let's get it on the table right now. Starting two and a half years ago, your predecessor agreed with the fact that in order to determine if Motorola breached its obligation of good faith, a jury would need to know a RAND rate, and the only way we were going to get there was to

have the court set it.

So I'll read your motion, but, you know, this is just backtracking, and it's, frankly, very frustrating to me. We're trying to move forward, and you're putting forward what I consider to be obstacles.

There are other things in there. There are some holdings as a matter of law, one of which you like, and therefore you quote frequently, which is your initial offer doesn't have to be RAND. You apparently like that. You mention it often. It's all over your briefing here. I'm not going to let you pick and choose over, oh, we like that one so it gets to come in, but, oh, nothing else does.

So I understand what you're doing here and I understand why you're doing it, but let's recognize that you have a very limited time for trial, and we are not going to relitigate issues that we have already decided.

So I think we understand each other. I don't really disagree. But I want to make it very clear that, you know, when I see this sort of thing, I'm intending to call both sides out, because otherwise this case will go on forever, and as fond as I am of all of you, I'm happy to have you out of this courtroom at some point before I retire.

MR. PRICE: I'm glad you developed a fondness in such a short time for us. I'll be happy to look at the motion. But, obviously, on the record, we're taking a position as to

internally he -- he wouldn't want to say -- he won't say that there is no obligation to give a FRAND license if the patentee says, "I will accept that licensee." He will not testify to that.

But what he will testify to -- because that would be inconsistent with the order. But what he will testify to is that part of the commitment is that you negotiate in good faith. Now -- and that covers sort of what we have here on the first page. And I actually don't think that's in dispute. I think that even Microsoft would agree that that's one of the obligations, you know, certainly that the SEP holder has, which is they're supposed to negotiate in good faith. But that's the question, you know, are we acting in good faith? And he'll testify that that's how you evaluate whether or not the opening offer was appropriate, was it in good faith?

And I'll give Your Honor an example. Your Honor has said that an unreasonable offer, you know, is inappropriate. I think that if --

THE COURT: I think what I said was an initial offer could be so out of proportion to RAND that it would constitute bad faith.

MR. PRICE: Thank you for clarifying that. And I think -- I think that's important, because I think what you were saying is that a jury could conclude if it's totally

outrageous that there was bad faith.

However, you could imagine a negotiation where the patentholder said, "Oh, gosh, I don't know what to ask for this. I've never done it before. A zillion dollars. Just tell me what you think you should pay." I'm asking for a zillion. "Give me an idea of what you think you should pay."

And if that person, in good faith, is trying to negotiate in good faith, but is trying to seek information from the other side, then I don't know if you conclude that, you know, saying that outrageous number is, by itself, bad faith. The question is, what is evidence of good faith, given all the circumstances? And I believe that's what Mr. Holleman would testify to on that issue.

THE COURT: Well, let's take page 1, paragraph 59 as an example. You struck that. Is that correct?

MR. PRICE: Yes.

THE COURT: Okay. Then that's the one I want to concentrate on, because it will no longer be in the case.

When you insert the words "simply intended," I would use "simply intended" to be contrary to my order in this matter.

MR. PRICE: And I understand.

THE COURT: And, you know, I don't want to ask you if you agree or disagree with that. I'm glad you struck it. But that's the kind of thing that I need to prevent you from doing, because it's going to waste everybody's time, and all

range are, you have ruled that has to be taken into account in the opening offer. I don't think you've ruled that. If you have, maybe we can avoid part of a trial, because I don't think we're going to be putting on any witnesses for Motorola saying we did a royalty-stacking analysis before we made the opening offer. They're going to testify that they had to get an offer out, they didn't have time to analyze it, you know, specifically, they, in good faith, wanted to enter into negotiations, they went back to standard rates they asked for in the past, and they expected conversations to continue.

THE COURT: Well, without offering you an advisory opinion, what I would say is, I did not say in the order that the patentholder was required to consider royalty stacking or patent pools in formulating that opening offer. What I did say is you need to have it in relation to the RAND rate, and the RAND rate, I have held, needs to consider royalty stacking and patent pools, if they are available. So it's a subtle distinction, but it is a distinction.

MR. PRICE: And it's not -- here's the reason I think it's not -- it won't be as subtle when it's presented to the jury.

Your Honor is obviously going to tell them the RAND rate which the court came up with, and the RAND range. We have our other expert, Mr. Leonard, who will testify that, yeah, royalty stacking comes up in these negotiations. You would

rate, according to the court, includes royalty stacking and potential patent pools.

I would suggest to you that we're getting all wound up about some language as opposed to the real issue here. But if you're forcing me today to say is that an accurate or not an accurate statement, I'd say it's accurate and it's also irrelevant.

MR. PRICE: Well, I agree that it's irrelevant if -- if Microsoft would have taken the position, you have to take that into account as a matter of policy, as a matter of law before you make the offer.

THE COURT: There's a difference between policy and law, and I've walked you through this. I'll walk you through it one more time. Bad faith, RAND. RAND is composed of some *Georgia Pacific* factors and modified *Georgia Pacific* factors, two of which are royalty stacking and patent pools. I don't know how to be clearer than that, sir.

MR. PRICE: And you are clear, Your Honor. What I don't think you're saying, just to make sure, is -- because, again, I said we're not going to present evidence on this -- that you must, in that opening offer, have done all that in your head and considered that, because we're not going to be presenting testimony that we did.

THE COURT: I don't think you have to present testimony that you did, but you recognize the peril of if

C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 1st day of August 2013.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR
Official Court Reporter